### STATE OF NORTH DAKOTA

# **BOARD OF MEDICAL EXAMINERS**

IN THE MATTER OF:	)
North Dakota State Board of Medical	)
Examiners - Investigative Panel B	) RECOMMENDED
-	) FINDINGS OF FACT,
Complainant,	) CONCLUSIONS OF LAW,
	) AND ORDER
VS.	)
	)
Alan W. Alexander, M.D.	)
Respondent.	)

On April 4, 2003, a Complaint was filed with the North Dakota Board of Medical Examiners ("Board") by John M. Olson, Special Assistant Attorney General, counsel for the Board's Investigative Panel B, requesting administrative action against the license to practice medicine in North Dakota of Alan W. Alexander, M.D. The Complaint cites as grounds for administrative action allegations of violation of N.D.C.C. § 43-17-31(16), specifically that Alexander engaged in sexual abuse, misconduct, or exploitation related to his practice of medicine.

In conjunction with the Complaint, on April 4, the Board filed an Ex Parte Order of Temporary Suspension temporarily suspending Alexander's North Dakota license. Further, Mr. Olson issued a Notice of Hearing in compliance with the provisions for temporary suspension under N.D.C.C. § 43-17-32.1.

On April 4, 2003, the Board also requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to preside as hearing officer, *i.e.*, to conduct

the scheduled hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On April 8, 2003, the undersigned ALJ was designated to preside as hearing officer.

On April 22, 2003, Alexander filed a Request for Continuance. On April 23, 2003, Investigative Panel B filed a Motion for Protective Order and Brief. On April 29, 2003, the hearing officer issued an Order Granting Continuance and Notice of Prehearing Conference. A prehearing conference was held on April 30, 2003. On April 30, 2003, the hearing officer issued a Notice of Hearing and Protective Order. The Protective Order was with regard to prohibitions on public disclosure of the name, identity, patient information, and medical records of Patient A and her husband. The notice scheduled a July 15, 2003, hearing. On June 6, 2003, Alexander filed a Motion for Continuance. On June 11, 2003, the hearing officer issued a Notice of Rescheduled Hearing scheduling an August 28, 2003, hearing. On August 6, 2003, Alexander filed another Motion for Continuance. On August 14, 2003, the hearing officer issued a Notice of Rescheduled Hearing scheduling an October 6, 2003, hearing.

The hearing was held as rescheduled on October 6, at the Office of Administrative Hearings, Bismarck, North Dakota. Mr. Olson represented investigative Panel B. Alexander was present at the hearing and was represented by Mr. Orell D. Schmitz, Bismarck.

Investigative Panel B called five witnesses, including Patient A and her husband, Rolf Sletten, Alexander, and a local doctor, and offered 15 exhibits, all of which were admitted. Alexander testified in his own behalf and called two other witness, his wife and his personal doctor, and offered six exhibits, all of which were admitted. At the conclusion of the hearing, Alexander asked permission to obtain and file a late-filed exhibit. Mr. Schmitz submitted the late-filed exhibit with a November 3, 2003, cover letter. The late-filed exhibit is also admitted. In

accordance with the Protective Order and because there are references to Patient A and her husband throughout the record, not just in certain exhibits, the entire record in this matter has been sealed, subject to Board review and release by the Board as it determines.

On November 12, 2003, the hearing officer issued a Notice of Hearing Oral Argument, and on November 24, 2003, the record in this matter was closed with oral argument being made by counsel for the parties.

Based on the evidence presented at the hearing, the late-filed exhibit, and oral argument, the administrative law judge makes the following recommended findings of fact and conclusions of law.

# FINDINGS OF FACT

- 1. Alexander applied for a license to practice medicine in North Dakota on April 3, 2002. Exhibit 1. Alexander specializes in psychiatry. He first applied for a *locum tenens* permit to practice at St. Alexius Medical Center, in Bismarck, but later changed his application to one for a permanent license to practice at Archway Mental Health Services, Bismarck. Alexander was granted a Provisional Temporary License, No. PT 9129, on June 13, 2002. The Board issued him a permanent license, No. 9129, on July 26, 2002. Alexander's license is current, but is under temporary suspension in this matter.
- 2. Alexander's version of the facts in regard to this Complaint is, essentially, that he came to Bismarck to practice, began a formal professional relationship, a physician-patient relationship, treating Patient A, which formal, professional relationship ended in November 2002, when he left Bismarck. However, thereafter, he continued a quasi-professional relationship with Patient A after he left Bismarck, which he considered to be essentially a personal relationship. At the hearing, he said he considered this relationship, which continued

for several months after he left Bismarck, to be more along the lines of a relationship between friends, "a friend helping another friend." This relationship, he says, was maintained mostly by means of numerous telephone conversations, most of which were initiated by Patient A, mostly involving small talk, and only superficially relating to her medical treatment. However, Alexander acknowledges that there were three in-person meetings regarding that relationship after he initially left Bismarck. The first occurred during a trip by Alexander back to Bismarck, a trip which Alexander maintains was not made primarily for the purpose of his relationship with Patient A, but to wind up professional matters in Bismarck. The second occurred in Brookings, South Dakota, where Alexander again met Patient A, but for the purposes related to their personal relationship, again, a friend helping a friend. It is here, Alexander maintains, that the only sexual contact occurred between him and Patient A, contact that was initiated by Patient A, he says. This contact only involved Patient A putting her arms around Alexander in a romantic way, Alexander being shocked, and Alexander breaking off the contact, Alexander maintains. The third occurred in Hastings, Nebraska, where Alexander was then working in a VA hospital. Patient A initiated this meeting, Alexander says. She surprised him with this visit, he maintains. He says that he tried to end their relationship at this meeting. During the course of this meeting, Dr. Alexander twice prescribed medication for Patient A, for her migraine headaches. Thereafter, Alexander says that he put his foot down when Patient A again called him and he told her that their relationship had to stop, completely.

Although Dr. Alexander acknowledged at the hearing that this relationship with Patient A was problematic because he was still trying to help Patient A in a friendly way with her psychological problems after he initially left Bismarck, he maintains that it was really not a professional relationship. After he initially left Bismarck in November 2002, other physicians

were engaged in formal professional relationships with Patient A, he says. Yet, Alexander maintains that Patient A still trusted him, wanted to talk to him, and that his intent was just "to be someone she could talk to."

- 3. This matter presents credibility concerns, whom to believe? There is considerable conflicting testimony. Where there is conflicting testimony, the ALJ believes those testifying on behalf of Panel B's case, not Alexander and his wife, who testified for him. Patient A and her husband testified contrary to Alexander, and the testimony of Mr. Sletten and the local physician was also contrary to Alexander. Finally, Panel B offered the tape of a conversation between Mr. Sletten and Alexander, made near the beginning of the investigation of this matter. Exhibit 9. The tape conversation, too, is substantially contrary to Alexander's hearing version. It contains various admissions by Alexander, and there are inferences to be made from those admissions, which fit more closely with Panel B's version of the facts.
  - 4. The version of the facts that is most believable is as follows:
  - a. Patient A is a female with a complex medical history. *See* exhibit 3, her medical records; see also exhibit 4, her pharmacy records. Patient A's medical difficulties include mood disorder, post-traumatic stress disorder, panic disorder, and a history of alcohol dependence. She has recurrent migraine headaches. She claims child sexual abuse and has flashbacks and nightmares. She has been and is prescribed many medications. Exhibits 3 and 4. She is married.
  - b. Patient A has been treated by several psychiatrists, including Alexander, and continues psychiatric treatment. *See* exhibit 3.
  - c. Patient A first saw Alexander for medical treatment in August 2002 in Bismarck.

- d. Patient A and Alexander developed a good physician/patient relationship and Patient A came to look upon Alexander as her savior who "was going to make everything all right." Toward the end of this formal professional relationship the two became more and more friendly. In the beginning Alexander was very professional but near the end Alexander also began talking about his own personal problems. All of the contact between Patient A and Alexander at this time occurred in an office setting. The length of treatment sessions for Patient A varied between 30 minutes and 3 hours, generally becoming longer over time.
- e. Alexander resides in Memphis Tennessee and planned to leave Bismarck in November. He told Patient A about his intent to leave.
- f. When Alexander was preparing to leave near the end of November,
  Alexander and Patient A had contact outside of an office setting, at Alexander's
  apartment. Patient A had told Alexander in his office that day that she was having
  "feelings" for him. Alexander said he wanted to talk about that somewhere else.
  On either two or three days before Alexander initially left Bismarck, Patient A
  and Alexander met in Alexander's apartment and had sexual contact (holding
  hands, kissing, hugging, fondling, and engaging in sexual talk), and attempted
  sexual intercourse. Sexual intercourse failed because Alexander has a sexual
  dysfunction and did not have his Viagra with him.
- g. Alexander left Bismarck and returned home to Memphis for a short period of time.
- h. Patient A begin calling Alexander and they began a several month long history of making numerous phone calls during which they talked about many

things, including her medical issues and personal matters between them. *See* exhibit 13, Patient A and her husband's wireless records.

- i. Alexander returned to Bismarck in December 2002. Although he claimed it was for business purposes, to sign off on medical records, he accomplished no business purposes while in Bismarck. The real reason for the trip back to Bismarck was to see Patient A. The business purpose was a cover.
- į. Alexander met Patient A at her niece's apartment. Patient A's husband knew about the meeting and was told by Patient A of the business purpose of Alexander's trip and, also, that the apartment meeting was for therapeutic purposes, for Patient A. Alexander and Patient A had sexual contact at the apartment and engaged in sexual intercourse. The two staged a ruse to fool Patient A's husband because they were together for so long that day and evening, many hours. He was called and came over to the apartment to witness a staged reaction, a faked suicide. Prior to him coming, Alexander gave Patient A medication, which he told her was "prescription meth," medication prescribed for him. She took several of his pills. When Patient A's husband came over to the apartment, he witnessed his wife in an extreme state. Because of the medication she took, her state was extreme and dangerous. Alexander ended up staying overnight in the apartment, as did Patient A and her husband. Patient A's husband had been somewhat suspicious that evening. Alexander told the husband at the apartment that he was in the apartment only as Patient A's psychiatrist and therapist. Patient A told her husband, "he's helping me." Alexander left Bismarck

the next morning without doing any work in regard to medical records, the purported purpose of the trip.

- k. Alexander and Patient A continued their telephone conversations. The relationship continued. Alexander went to work in Hastings.
- 1. Thereafter, Patient A and her husband went on a cruise and had just gotten back to Miami where they spent the night. Early the next morning, Patient A called Alexander just after she got out of bed. The conversation was at least partially overheard by Patient A's husband from the bedroom. He heard Patient A talking in a "sultry" voice describing what she was wearing. She said, "I hope you get to see it some time." He said the conversation had "sexual overtones." He intentionally interrupted her. She cut the conversation short. She said she was talking to Alexander about a dream she had, and hung up. The husband called Alexander and asked Alexander what Alexander and his wife were talking about. He said Alexander talked to him about "transference" and went on about his wife's condition. He said he told Alexander that he did not think his wife was having a dream. He said that Alexander said he was not aware it was a dream but that he was not really sure what she was talking about. At the hearing, Patient A's husband said rather emphatically that Patient A was not relating a dream to Alexander during the Miami conversation. At the hearing, Patient A said that she was not talking about a dream at that time, but had tried to cover up at the time, to deceive her husband. She admitted she lied. Patient A's husband also testified that based on what Alexander told him in their conversation that day, there was no doubt in his mind that Alexander was giving his wife therapy over the telephone.

- m. Thereafter, Patient A and Alexander met in Brookings where they stayed in a motel together. There is some dispute as to how long he stayed there but none about the fact that they met in Brookings. Someone stayed in a motel there for three days. The motel receipt is only in Patient A's name, however. *See* exhibit 7. The two had sexual intercourse more than once in Brookings. They talked mostly about their personal relationship while at Brookings.
- n. Thereafter, Patient A and Alexander met in Hastings. Patient A began driving to Hastings from Bismarck to see Alexander without his knowledge, and called him on the way. Alexander arranged for a motel room for her. *See* exhibit 8 (again the room is in Patient A's name). The two again talked mostly about their personal relationship, and also about Alexander getting a divorce and marrying Patient A. The two had sexual intercourse in Hastings.
- o. Patient A returned to Bismarck from Hastings and the two continued their telephone conversations. Patient A began to have doubts about the relationship. She told Alexander that she was having doubts about her faith. She confided in her daughter and her sister-in-law. Her sister-in-law informed the Board. When confronted during the Board's investigation, Patient A initially began to lie about her relationship with Alexander but then decided to tell the truth. She also then asked for an emergency appointment with another psychiatrist, whom she saw, and began telling him about her relationship with Alexander. *See* exhibit 3. She then called Alexander and told him she was now telling the truth about their relationship. She testified that he said he was "sorry to involve me in his death spiral." She said that only then did Alexander call off their relationship.

5. After learning of the alleged situation between Patient A and Alexander, Mr. Sletten called Alexander on April 1, 2003, at the hospital in Hastings. He taped the conversation. Exhibit 9. Actually, there were two separate conversations that day. In the first phone call, Mr. Sletten said he was calling about Patient A and Alexander said he was not in a place where could not talk at the time and would call back. He did call back. Mr. Sletten then told Alexander that he was concerned about the relationship. Alexander said, "I agree, and I'm concerned myself." Mr. Sletten then asked whether or not the "sexual relationship is continuing or whether it is terminated." Alexander said, "no sir, it is not continuing it will not continue, it cannot continue, it should never have begun." Alexander did not protest the use of the words "sexual relationship" by Mr. Sletten. Mr. Sletten then asked Alexander about where and what places it occurred. He said, "I know it happened in Brookings." Alexander said that was the only place that "the relationship reached that point." Mr. Sletten talked about a sexual relationship in Hastings and Bismarck, but Alexander denied it. Mr. Sletten asked Alexander if he was treating Patient A in Hastings. Alexander said, "it was not professional, the relationship has not been professional since I turned her over to Dr. ... "Alexander then acknowledged to Mr. Sletten that he prescribed medication to Patient A in Hastings for her migraine headaches. Mr. Sletten then asked about Alexander's plans, "is the social relationship continuing on any level." Alexander said, "it won't be able to, I've come to that conclusion." Then Mr. Sletten said, "tell me what led up to the sexual contact in Brookings. How in the world did you get yourself to that position?" Alexander talked about becoming friends with Patient A over the course of their three-month professional relationship. He said "I no longer thought of her as a patient." Mr. Sletten asked whether

Patient A was still talking to him about her issues. Alexander denied that she was. Mr. Sletten then asked about the incident in Bismarck at the niece's apartment. He asked whether that was social or professional. Alexander said it was social. He said, though, that it "was presented to her husband as being professional but, I do not and have never felt comfortable with treating anyone outside of the knowledge of those who were formally treating her." Mr. Sletten asked why they called the husband to come over. Alexander said, "she had a flashback," but admitted that the situation was falsely presented to her husband. But, he said, a "reference I made triggered a flashback in her." He went on to say, "this is the first time I have developed any kind of relationship outside of a professional relationship with a patient or ex-patient. I was reluctant to do so initially simply because I didn't want to run that risk, but that's no excuse." Then, Mr. Sletten asked about his future plans. Alexander responded, "the only future plans I have concerning her are to let her know there is no way to continue even in a friendship because there is concern on my part that circumstances would lead to further inappropriate relationships between us."

6. Alexander made these admissions on tape before Panel B knew about the complaint against Alexander. Again, at no time did Alexander ask questions about what Mr. Sletten meant by the words "sexual relationship" and "sexual contact." Neither did he try to explain what he meant by the use of those words. During this April taped conversation, Alexander's voice is much clearer and firmer than at any time at the hearing. He answered questions much more quickly than he did at the hearing. What he said on the tape that day was more in line with Patient A's version and Panel B's version, except for denying a sexual relationship in Bismarck and Hastings, than the version he

later gave at the hearing. Indeed, at the hearing Alexander was very cautious and careful; there were several times when he departed from what he said on the tape, especially in regard to the type of relationship he had with Patient A. At the hearing, Alexander sometimes appeared to be fabricating evidence. One time in particular deserves mentioning. At one point in his direct examination of Alexander, counsel for Panel B changed his line of questioning abruptly and asked about Alexander's apartment. He asked if Patient A had ever been in his apartment. Alexander responded, "no." Then, he asked Alexander to describe his apartment. Alexander hesitated. Counsel tried to assist him to remember and then asked what color is the couch. Alexander said, "peach, sort of ...," then he volunteered without a further question being asked, "she asked me to describe it over the phone." Counsel then said, "so you would have probably described the apartment to her over the phone." Alexander said, "I did, she asked what it was like." Counsel then said, "so if she is able to describe your apartment it would be because you told her what the apartment looked like." Alexander then said, "yes, it would not be because she had been in it."

7. Ale xander suffers from narcolepsy. He was first diagnosed with narcolepsy about ten and one-half years ago while he was in medical school. *See* exhibit 1, especially the materials he submitted to the Board with his application. *See* also, exhibit 21, letter from one of Alexander's physicians; exhibit 20, prescriptions for Alexander's narcolepsy; and exhibits 18 and 19, articles on narcolepsy. Two physicians and Alexander's wife talked extensively about the extreme effect of narcolepsy on him, his family, and his work (Alexander's family doctor testified and another physician submitted a letter, exhibit 21). Alexander also talked about the effect of narcolepsy on him. However, the evidence shows that Alexander has learned to deal

with his narcolepsy and he has continued to practice medicine full-time, if in a somewhat modified practice.

- 8. Much of what Alexander perceives as a problem in his relationship with Patient A both he and his wife blame on his narcolepsy. The evidence does not show Alexander's narcolepsy to be substantially related to his inappropriate behavior with regard to Patient A, however. Alexander and his wife appear to be looking for cover.
- 9. Panel A's case included evidence from a local physician about Alexander exceeding the boundaries of his physician-patient relationship with Patient A. Exhibits 10, 11, and 12 relate to the physician-patient relationship and the code of medical ethics, those portions dealing with sexual exploitation, boundaries, and sexual misconduct in the practice of medicine. Even if Alexander is to be believed, totally, a fair understanding of the local physician's testimony and a fair reading of those materials, exhibits 10, 11, and 12, lead to a conclusion that Alexander crossed the boundaries of an appropriate physician-patient relationship with Patient A and because of that relationship engaged in misconduct in ethical terms. Again, however, the evidence that is to be believed in this matter goes much further and shows a clearly inappropriate physician-patient relationship coupled with sexual misconduct in the nature of explicit sexual contact and romantic interaction between physician and patient. Alexander had sexual contact and romantic interaction with Patient A before he left Bismarck and the formal professional relationship with Patient A, did not clearly terminate his professional relationship with Patient A, and had sexual contact and romantic interaction with Patient A after he left Bismarck, up until the time when Mr. Sletten called him on April 1.

# **CONCLUSIONS OF LAW**

- 1. Alexander is currently licensed as a physician to practice medicine in North Dakota under the provisions of N.D.C.C. chs. 43-17 and 43-17.1.
- 2. Alexander is, therefore, subject to disciplinary action by the Board under the provisions of N.D.C.C. § 43-17-30.1 for proven violations of N.D.C.C. § 43-17-31.
- 3. The evidence shows that Alexander established a formal physician-patient relationship with Patient A which led to a sexual relationship with her during the time that Alexander was Patient A's physician, and that the sexual relationship continued as part of a continuing social-professional relationship even after Alexander ceased a formal physician-patient relationship with Patient A. The evidence shows, by the greater weight of the evidence, that Alexander has engaged in sexual abuse, misconduct, and exploitation related to his practice of medicine in North Dakota, in violation of N.D.C.C. § 43-17-31(16).
- 4. The evidence shows that Alexander continued to prescribe medications for Patient A after the formal physician-patient relationship with Patient A was terminated, while participating in a sexual relationship with her. The evidence shows that Alexander administered to Patient A pills of a prescription medication, prescribed for his own use, for other than medical therapeutic purposes. The evidence shows, by the greater weight of the evidence, that Alexander has engaged in the prescription, administration, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of N.D.C.C. § 43-17-31(17).
- 5. The evidence shows, by the greater weight of the evidence, that the Board had cause to proceed with disciplinary action under N.D.C.C. § 43-17-32.1. Because of continuances requested by Alexander through counsel, however, this matter is being concluded much as a

regular administrative proceeding. N.D.C.C. N.D.C.C. § 43-17-32.1(3). However, Alexander's license to practice medicine in North Dakota still remains temporarily suspended pending the issuance of the final order of the Board.

6. The costs of the prosecution of this administrative disciplinary proceeding may be assessed against Alexander under N.D.C.C. § 43-17-31.1, along with the imposition of disciplinary action by the Board for violations of N.D.C.C. § 43-17-31.

# **RECOMMENDED ORDER**

The greater weight of the evidence shows that Alexander violated the provisions of N.D.C.C. § 43-17-31(16), and (17). Because of the proven violations, and in accordance with the recommendation of Panel B, it is ordered that Alexander's license to practice medicine in North Dakota be REVOKED. Further, it is ordered that Alexander pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and Panel B in the investigation and prosecution of this case.

Dated at Bismarck, North Dakota, this 15th day of December, 2003.

State of North Dakota Board of Medical Examiners

By: \_\_\_\_\_\_Allen C. Hoberg

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